

(i.e., the “hub” country), and then forwarded to the third country only by taking at published rates and reselling the international message telephone service (IMTS) of a carrier in the hub country;

(2) U.S.-inbound switched traffic shall be carried to a country for which the Commission has authorized the provision of switched services over private lines (i.e., the “hub” country) as part of the IMTS traffic flow from a third country and then terminated in the United States over U.S. international private lines from the hub country;

(3) U.S. common carriers that route U.S.-billed traffic via switched hubbing shall tariff their service on a “through” basis between the United States and the ultimate point of origination or termination;

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(4) of this part.

[60 FR 67339, Dec. 29, 1995, as amended at 61 FR 15728, Apr. 9, 1996; 63 FR 64754, Dec. 9, 1997; 64 FR 19064, Apr. 19, 1999]

#### **§ 63.18 Contents of applications for international common carriers.**

Except as otherwise provided in this part, any party seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application which shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience, and necessity. Such statement shall consist of the following information, as applicable:

(a) The name, address, and telephone number of each applicant;

(b) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

(c) The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

(d) A statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis);

(e) One or more of the following statements, as pertinent:

(1) *Global facilities-based authority.* If applying for authority to become a facilities-based international common carrier subject to § 63.22 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of this part of the Commission’s rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 of this part.

(2) *Global resale authority.* If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23 of this part, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of this section of the Commission’s rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) *Transfer of control or assignment.* If applying for authority to transfer control of a common carrier holding international Section 214 authorization or to acquire, by assignment, another carrier’s existing international Section 214 authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete

paragraphs (h) through (p) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer were granted. See also § 63.24 of this part (*pro forma* assignments and transfers of control).

(4) *Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23 of this part, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

(f) Applicants may apply for any or all of the authority provided for in paragraph (e) of this section in the same application. The applicant may want to file separate applications for those services not subject to streamlined processing under § 63.12.

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity

of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(i) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.

(j) A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:

(1) The applicant is a foreign carrier in that country; or

(2) The applicant controls a foreign carrier in that country; or

(3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(k) For any destination country listed by the applicant in response to paragraph (j) of this section, the applicant shall make one of the following showings:

(1) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or

(3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold

non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

(l) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) of this part or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(m) With respect to regulatory classification under § 63.10 of this part, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) of this section and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 of this part.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) A certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. 853a.

(p) If the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.

NOTE 1 TO PARAGRAPH (H): The word "control" as used in this section is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

NOTE 2 TO PARAGRAPH (H): The term "facilities-based carrier" as used in this section means one that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable, or an INTELSAT or separate satellite system.

NOTE 3 TO PARAGRAPH (H): The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. *See, e.g., Fox Television Stations, Inc.*, 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

NOTE 4 TO PARAGRAPH (H): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive

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multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent ( $0.30 \times 0.26$ ). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

[61 FR 15729, Apr. 9, 1996, as amended at 62 FR 32965, June 17, 1997; 62 FR 45762, Aug. 29, 1997; 62 FR 64755, Dec. 9, 1997; 63 FR 24121, May 1, 1998; 64 FR 19064, Apr. 19, 1999]

### § 63.19 Special procedures for discontinuances of international services.

(a) Any non-dominant international carrier as this term is defined in § 63.10 that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) Any dominant international carrier as this term is defined in § 63.10 that seeks to retire international facilities, dismantle or remove international trunk lines, and the services being provided through these facilities are not being discontinued, reduced or impaired, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs service to a community or retires facilities that impair or reduce service to a com-

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munity, the dominant carrier shall file an application pursuant to §§ 63.62 and 63.500.

[61 FR 15732, Apr. 9, 1996]

### § 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. Provided, however, that where applications involve only the supplementation of existing international facilities, and the issuance of a certificate is not required, an original and two copies of the application shall be furnished. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

(b) No application accepted for filing and subject to the provisions of §§ 63.18, 63.62 or 63.505 of this part shall be granted by the Commission earlier than 28 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period, or the application qualifies for streamlined processing pursuant to § 63.12 of this part.

(c) No application accepted for filing and subject to the streamlined processing provisions of § 63.12 of this part shall be granted by the Commission earlier than 14 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

(d) Any interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing and ineligible for streamlined processing. The petitioner shall serve a copy of such petition on the applicant no later than the date of filing thereof with the Commission. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a